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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998

BEFORE :

THE HON'BLE MR.JUSTICE G.PATRI BASAVANA GOUD

WRIT PETITION No.5185/1997

Between :

Karnataka State Road
Transport Corporation,
rep. by Divisional Controller,
Bellary Division,
Bellary.

.. Petitioner

(By Smt.Prabha Murthy, Advocate)

And :

1. The Industrial Tribunal,
Hubli.

2. A.B.Talawar,
S/o. Bheemappa,
Hirur Post, Muddebihal
Taluk, Dist: Bijapur.

.. Respondents

(By Sri.Ramesh B. Anneppannavar, Advocate
for R-2 and Sri.K.H.Jagadish, HCGA for
R-1)

This Writ Petition is filed under Articles
226 & 227 of the Constitution of India praying to
grant stay vide Annex.A dated 8.5.96.

This Writ Petition is coming on for orders
this day, the Court made the following :

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ORDER

The learned High Court Government Advocate appears for 1st respondent and Sri.Ramesh B. Anneppannavar, learned counsel for 2nd respondent.

2. By consent of both sides, the matter is heard and is being disposed of finally at this stage.

3. On proof of misconduct in a domestic enquiry, the 2nd respondent-Conductor in the petitioner-KSRTC was dismissed from service. He raised an industrial dispute in that regard, that came to be referred to the Industrial Tribunal, Hubli, under Section 10 (1) (c) of the Industrial Disputes Act, 1947 ('Act' for short). The Tribunal initially held the domestic enquiry to be invalid. Fresh evidence was then led in. On appreciation of the evidence on record, the Tribunal has found the charge as not proved. Consequently, it set aside the order of dismissal and has directed reinstatement of the 2nd respondent with back wages from the date of reference. This the Tribunal ~~has~~ did by its award dated 8.5.1996 at Annexure-'A'. In



this writ petition under Articles 226 & 227 of the Constitution, the petitioner-KSRTC seeks quashing of the said award at Annexure-'A'.

4. The finding of the Tribunal that the charge is not proved is perverse for the following reasons :

The allegation against the 2nd respondent was that, at the time his bus was checked, he had failed to issue tickets inspite of having collected fare from the passengers. The domestic enquiry having been held invalid, MW-1 the Traffic Inspector had spoken to this aspect. He also referred to the passengers' statement recorded in the presence of the 2nd respondent as well as the driver. He also referred to the entries in the Way Bill. The Tribunal has discarded this evidence on flimsy grounds. It has referred to the passengers' statement at Ex.M-7 ~~has~~ having certain infirmities, which, in the normal course, could not have been made much of. There was the Way Bill at Ex.M-5 and the passengers' statement at Ex.M-7. The evidence on record thus conclusively establishes the fact that the 2nd respondent was guilty of pilferage. The Tribunal brushes aside this entire evidence with an

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observation that the amount of pilferage is a meagre sum. The finding of the Tribunal in this regard is perverse.

5. The charge of pilferage thus having been established, the fact still remains that the punishment of dismissal from service is disproportionate to the said charge. In the circumstances, a lesser punishment needs to be substituted and in my opinion, denial of 75% of back wages would be an appropriate lesser punishment. This would have been normally done from the date of order of dismissal till the date of reinstatement. But, the dismissal being in the year 1983, reference has come to be made only in the year 1987. There is a delay of four years in raising the dispute. Sri.Ramesh Anneppannavar submits that, 2nd respondent had preferred appeal and revision. He is unable to give the date on which the said appeal and revision came to be disposed of. In the circumstances, there is no reason to conclude that the four years delay in raising the dispute was attributable to the Government concerned. 2nd respondent himself ^{with} be held to be guilty of delay and latches in respect of these four years period. He ought to be denied back wages for this period,

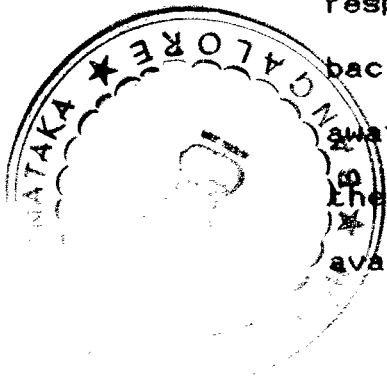
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though he is entitled to be given the benefit of continuity of service since the order of dismissal is set aside. The impugned award, therefore, needs to be modified to this extent.

6. Writ petition is partly allowed. Impugned award is modified. The charge of pilferage is held proved. The punishment of dismissal from service is held disproportionate to the said charge. In its place, a lesser punishment of denial of 75% of back wages is substituted. With this lesser punishment, the 2nd respondent shall be reinstated in service with the benefit of continuity of service and consequential benefits without reference to the order of dismissal, subject however to the condition that, from the date of order of dismissal i.e. 20.7.1983 till the date of the reference i.e. 30.7.1987, the 2nd respondent shall not be entitled to any back wages, and that from 30.7.1987 till the date of reinstatement, he shall be entitled to only 25% of back wages. It is submitted that the, 2nd respondent is already reinstated in service. The back wages as calculated in terms of this modified award shall be paid to him within two months from the date a certified copy of this order is made available to the petitioner.



Sd/-
JUDGE